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IN THE

Supreme Court of the United States

October Term, 1971

No. 71-956

GREGORY A. CRANSON and RANDALL J. CRANSON, minors, by and through their natural guardian, WALTER N. CRANSON

Petitioners,

vs.

EAST OTERO SCHOOL DISTRICT R-1, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinions below are as set forth in the Appendix to the petition herein.

QUESTION PRESENTED

The question presented in the petition is not stated in terms of the circumstances of the case as required by the rules of this Court.

Stated in terms of the facts of this case the question is:

May a public school district in the state of Colorado constitutionally adopt and enforce rules and regulations gov-

erning the length of male students' hair when such rules and regulations are reasonably related to prevention of interference with the educational process and maintenance of decorum and discipline in its schools?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In addition to the constitutional provisions presented in the Petition for Certiorari, this case also involves:

Constitution of Colorado, Article IX, Section 15

> **School districts—board of education.**—The general assembly shall, by law, provide for organization of school districts of convenient size, in each of which shall be established a board of education, to consist of three or more directors to be elected by the qualified electors of the district. Said directors shall have control of instruction in the public schools of their respective districts.

Colorado Revised Statutes, 1963, 123-30-10

> **Board of education—specific powers.**—(1) In addition to any other power granted to a board of education of a school district by law, each board of education of a school district shall have the following specific powers, to be exercised in its judgment:
>
> (13) To adopt written policies, rules and regulations, not inconsistent with law, which may relate to study, discipline, conduct, safety and welfare of all pupils, or any classification thereof, enrolled in the public schools of the district.

Colorado Revised Statutes, 1963, 123-20-7

Grounds for suspension, expulsion, and denial of admission.—(1) (a) The following shall be grounds for suspension or expulsion of a child from a public school during a school year:

(b) Continued willful disobedience or open and persistent defiance of proper authority;

STATEMENT OF THE CASE

Petitioners Gregory A. Cranson and Randall J. Cranson were expelled by the respondent after an extensive hearing before its board of education wherein it was shown that they failed to comply with a regulation which prohibited boys from wearing their hair over the eyes, over the ears, or over the collar.

Prior to the hearing before respondents' board of education, petitioners initiated this action in the United States District Court for the District of Colorado alleging that the hair length regulation was unconstitutional and void as applied to them. They sought a temporary restraining order which was denied in an order dated October 13, 1970. The matter came to trial on October 21, 1970, and the District Court issued its Memorandum Order and Opinion on October 22, 1970 (Appendix to petition p. 36a). Therein the Court found that in 1968, the school adopted a regulation which did not restrict the length of male students' hair; that following the adoption of the regulation, decorum and discipline suffered from the resultant hair lengths; and that on December 12, 1969, a new regulation was adopted which prohibited the wearing of hair over the eyes, over the ears, or over the collar.

The District Court concluded from the evidence that the new regulation was neither arbitrary nor unreasonable because there existed a rational basis for its adoption in the interference with the educational process resulting from the breakdown of discipline and student attitudes of de-

fiance which existed during the time the more liberal regulation was in effect. The District Court held that the regulation did not violate the constitutional rights of the petitioners and dismissed their complaint and cause of action.

The United States Court of Appeals for the Tenth Circuit affirmed (Appendix to petition p. 1a).

ARGUMENT

I. THERE IS NO BASIC CONFLICT IN THE DECISIONS OF THE CIRCUITS.

Petitioners herein state as reasons for granting the writ that (1) there is a conflict among the circuits and (2) the issues proposed by hair regulations are profound.

Rule 19, Rules of the Supreme Court, provides that a review on writ of certiorari "will be granted only where there are special and important reasons therefor." Conflict in the decisions of the circuits on the same matter is one of the reasons to be considered by this Court in the exercise of its discretion whether to grant the writ, but the rule makes it clear that such conflict is neither controlling nor fully measures this Court's discretion.

Challenges to public school regulations affecting hair styles of male students have now been presented to the United States Courts of Appeal for the First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits, in addition to the Tenth Circuit through the instant case.[1]

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[1] *Richards v. Thurston*, 424 F.2d 1281 (1st Cir. 1970); *Gere v. Stanley*, —— F.2d —— (3rd Cir. 1971, No. 71-1025); *Massie v. Henry*, —— F.2d —— (4th Cir. 1972, No. 15,325); *Ferrell v. Dallas Independent School District*, 392 F.2d 697 (5th Cir.), *cert. den.* 393 U.S. 856 (1968); *Davis v. Firment*, 408 F.2d 1085 (5th Cir. 1969);

The First, Fourth, Seventh, and Eighth Circuits have held for students while the Third, Fifth, Sixth, Ninth, and Tenth Circuits have held for public school officials.[2] Yet, when the facts are analyzed, any apparent conflict in the circuits is greatly diminished and "the differences in approach are more semantic than real."[3] In any event, this apparent conflict has been presented to this Court in previous petitions for certiorari and it has not chosen to exercise its discretionary authority to review.

II. PUBLIC SCHOOL HAIR REGULATIONS DO NOT PRESENT IMPORTANT CONSTITUTIONAL QUESTIONS.

Any decision in a case such as this is heavily dependent upon the facts surrounding the adoption, publication, and enforcement of the challenged regulation in the setting of

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Griffin v. Tatum, 425 F.2d 201 (5th Cir. 1970); *Stevenson v. Board of Education of Wheeler County*, 426 F.2d 1154 (5th Cir.), *cert. den.* 400 U.S. 957 (1970); *Wood v. Alamo Heights Independent School District*, 433 F.2d 355 (5th Cir. 1970); *Whitsell v. Pampa Independent School District*, 439 F.2d 1198 (5th Cir. 1971); *Dawson v. Hillsborough County, Florida, School Board*, 445 F.2d 308 (5th Cir. 1971); *Pound v. Holladay*, —— F.2d —— (5th Cir. 1971, No. 71-1434); *Jackson v. Dorrier*, 424 F.2d 213 (6th Cir.), *cert. den.* 400 U.S. 850 (1970); *Gfell v. Rickelman*, 441 F.2d 444 (6th Cir. 1971); *Breen v. Kahl*, 419 F.2d 1034 (7th Cir. 1969), *cert. den. sub nom. Kahl v. Breen*, 398 U.S. 937 (1970); *Crews v. Cloncs*, 432 F.2d 1259 (7th Cir. 1970); *Livingston v. Swanquist*, —— F.2d —— (7th Cir.) *cert. den. sub nom. Swanquist v. Livingston*, —— U.S. ——, 30 L. Ed. 2d 367 (1971); *Bishop v. Colaw*, 450 F.2d 1069 (8th Cir. 1971); *King v. Saddleback Junior College District*, 445 F.2d 932 (9th Cir.), *cert. den.* ——U.S.——, 30 L. Ed. 2d 294 (1971) (*certiorari* was denied in the companion case of *Olff v. East Side Union High School District at* 40 U.S.L.W. 3332 (1972).

[2]However, the Court of Appeals for the Fourth Circuit has affirmed the denial of a student's motion for a preliminary injunction against the continuing enforcement of a school hair length regulation. *Rumler v. Board of School Trustees*, 437 F.2d 953 (4th Cir. 1971).

[3]*Bishop v. Colaw*, 450 F.2d 1069, 1075 (8th Cir. 1971).

the specific school.[4] Without question, entry by the federal courts into the complex process of operating public school systems would be of great significance.[5] This is not

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[4]The strong dependency of each of these cases upon the particular factual setting in which it arises is amply demonstrated by the decisions in the Fifth Circuit. After six consecutive decisions of the Court of Appeals for that Circuit had affirmed the validity of school regulations such as those being challenged here (*Ferrell v. Dallas Independent School District*, 392 F.2d 697 (5th Cir.), *cert. den.* 393 U.S. 856 (1968); *Davis v. Firment*, 408 F.2d 1085 (5th Cir. 1969); *Griffin v. Tatum*, 425 F.2d 201 (5th Cir. 1970); *Stevenson v. Board of Education of Wheeler County*, 426 F.2d 1154 (5th Cir.), *cert. den.* 400 U.S. 957 (1970); *Wood v. Alamo Heights Independent School District*, 433 F.2d 355 (5th Cir. 1970); *Whitsell v. Pampa Independent School District*, 439 F.2d 1198 (5th Cir. 1971), a District Court decision striking down a hair length regulation was affirmed in a *per curiam* decision. This result was based upon the facts as presented to the trial court upon which the District Court determined, as a finding of fact, that there had been no necessity for the promulgation of the hair style restriction by the defendent school board. *Dawson v. Hillsborough County, Florida, School Board*, 445 F.2d 308 (5th Cir. 1971).

[5]The late Justice Black stated:

> "I refuse to hold for myself that the federal courts have constitutional power to interfere in this way with the public school system operated by the States. And I furthermore refuse to predict that our Court will hold they have such power.
>
> * * * *
>
> And I cannot now predict this Court will hold that the more or less vague terms of either the Due Process or Equal Protection Clauses have robbed the States of their traditionally recognized power to run their school system in accordance with their own best judgment as to the appropriate length of hair for students.
>
> * * * *
>
> Surely the federal judiciary can perform no greater service to the Nation than to leave the States unhampered in the performance of their purely local affairs.
>
> * * * *
>
> [It] would be difficult to prove by reason, logic, or common sense that the federal judiciary is more competent to deal with hair length than are the local school authorities and state legislatures of all our 50 states."

Karr v. Schmidt, 401 U.S. 1201, 1202-1203 (Black, Circuit Justice, 1971)

the situation here. The Court of Appeals below has properly perceived and applied the law leaving the responsibility for the day-to-day operation of the public schools in the hands of the states.[6]

No significant national implications resulted when this Court declined to review other similar cases.[7] Each such case is of only local importance because each decision depends upon its unique factual setting. Accordingly, it would serve no useful purpose for this Court to repeat the basic proposition of constitutional law that federal courts have no jurisdiction to participate in the operation of public schools.

It is submitted that this Court has already determined the substantive question presented by this case by the distinction made in *Tinker v. Des Moines Community School District:*

> "The problem posed by the present case does not relate to the regulation of the length of skirts or the type of clothing, to hair style, or deportment. Cf. *Ferrell v. Dallas Independent School District,* 392 F.2d 697 (1968); *Pugsley v. Sellmeyer,* 158 Ark. 247, 250 SW 538 (1923). It does not concern aggressive, disruptive action or

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[6]*Epperson v. Arkansas,* 393 U.S. 97, 104 (1968).

[7]*Ferrell v. Dallas Independent School District,* 392 F.2d 697 (5th Cir.), *cert. den.* 393 U.S. 856 (1968); *Stevenson v. Board of Education of Wheeler County,* 426 F.2d 1154 (5th Cir.), *cert. den.* 400 U.S. 957 (1970); *Jackson v. Dorrier,* 424 F.2d 213 (6th Cir.), *cert. den.* 400 U.S. 850 (1970); *Breen v. Kahl,* 419 F.2d 1034 (7th Cir. 1969), *cert. den. sub nom. Kahl v. Breen,* 398 U.S. 937 (1970); *Livingston v. Swanquist,* —— F.2d —— (7th Cir.), *cert. den. sub nom. Swanquist v. Livingston,* —— U.S. ——, 30 L. Ed. 2d 367 (1971); *King v. Saddleback Junior College District,* 445 F.2d 932 (9th Cir.), *cert. den.* —— U.S. ——, 30 L. Ed. 2d 294 (1971); and *Olff v. East Side Union High School District,* 445 F.2d 932 (9th Cir. 1971), *cert. den.* 40 U.S.L.W. 3332 (1972).

> even group demonstrations. Our problem involves direct primary First Amendment rights akin to 'pure speech'."[5]

Even if this distinction does not amount to a determination of the substantive issue in this case, the Court in *Tinker* apparently did not regard hair regulations as involving important constitutional questions.

CONCLUSION

School hair length regulations do not present profound constitutional issues and the conflict in the decisions of the circuits in such cases are more semantic than real.

For the foregoing reasons, respondents respectfully pray that the petition be denied.

Respectfully submitted,

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[5] *Tinker v. Des Moines Community School District*, 393 U.S. 503, 507-508 (1969).